

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAR 21 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

ADRIAN M.,)	2 CA-JV 2011-0132
)	DEPARTMENT A
)	
Appellant,)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
v.)	Rule 28, Rules of Civil
)	Appellate Procedure
ARIZONA DEPARTMENT OF ECONOMIC)	
SECURITY and ADRIANA M.,)	
)	
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J19503100

Honorable Javier Chon-Lopez, Judge

AFFIRMED

Emily Danies

Tucson
Attorney for Appellant

Thomas C. Horne, Arizona Attorney General
By Laura J. Huff

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

ECKERSTROM, Presiding Judge.

¶1 Appellant Adrian M. challenges the juvenile court’s order terminating his parental rights to his daughter, Adriana M., born June 2010.¹ He asserts that insufficient evidence supported the court’s determination that termination was warranted because he was unable to discharge his parental responsibilities due to mental illness or chronic substance abuse, *see* A.R.S. § 8-533(B)(3), and because Adriana had been in court-ordered, out-of-home placement for nine months or longer, *see* § 8-533(B)(8)(a). He also argues the court erred in finding that termination of his parental rights was in Adriana’s best interests.

¶2 Before it may terminate a parent’s rights, a juvenile court must find by clear and convincing evidence that at least one statutory ground for severance exists and must find by a preponderance of the evidence that terminating the parent’s rights is in the best interests of the child. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 22, 110 P.3d 1013, 1018 (2005). We will affirm an order terminating parental rights unless we must say as a matter of law that no reasonable person could find those essential elements proven by the applicable evidentiary standard. *Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). And we view the evidence in the light most favorable to upholding the court’s order. *Manuel M. v. Ariz. Dep’t of Econ. Sec.*, 218 Ariz. 205, ¶ 2, 181 P.3d 1126, 1128 (App. 2008). Because the resolution of “conflicts in the evidence is uniquely the province of the juvenile court

¹The juvenile court also terminated the parental rights of Adriana’s mother, but she is not a party to this appeal.

as the trier of fact,” we will not reweigh the evidence. *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002).

¶3 Just after Adriana’s birth, Child Protective Services (CPS), a division of the Arizona Department of Economic Security (ADES), removed Adriana from her parents’ care after both tested positive for cocaine and Adrian tested positive for methamphetamine. The juvenile court adjudicated Adriana dependent as to Adrian after he admitted the allegations in an amended dependency petition. Adrian acknowledged that his “drug use places [Adriana] at risk of harm,” and that he had failed to protect Adriana “from the Mother’s substance abuse and untreated mental health issues,” although he claimed he had been unaware of those issues. The court set a case plan of family reunification, and Adrian began participating in services.

¶4 Following a psychological evaluation, Dr. Carlos Vega diagnosed Adrian with cannabis and cocaine dependency, “in reported full but early remission,” and depressive disorder. Vega also reported that Adrian had many salient traits of antisocial personality disorder and that further evaluation, particularly of his compliance with the case plan, was necessary to rule out that diagnosis. Vega testified that antisocial personality disorder would prevent Adrian from effectively parenting Adriana and that, without treatment, it would continue indefinitely. Vega recommended that Adrian undergo “intensive psychotherapy” but noted his prognosis was “very unfavorable.” Adrian never attended psychotherapy, missing three scheduled sessions, although at trial he claimed he had seen his assigned psychologist once or twice.

¶5 Although Adrian attended services for several months, he also was arrested repeatedly for incidents of domestic violence with Adriana’s mother, which led to months of incarceration. Moreover, Adrian tested positive for alcohol on several occasions, despite being instructed to consume no alcohol and to maintain his sobriety. On three occasions, Adrian tested positive for phencyclidine (PCP), and Adrian admitted snorting “bath salts,” a product his family support partner stated was legal but would be used to “give someone a high.” Adrian admitted to his family support partner that he had relapsed and at trial stated he had taken the bath salts to “feel high” and because he was “irritated” about having CPS “on [his] back.” Vega noted that Adrian’s desire to become intoxicated via bath salts and alcohol and his numerous contacts with police confirmed that Adrian suffered from antisocial personality disorder and reflected his continuing problems with chemical dependency. Adrian’s participation in services declined, and he quit participating altogether in May 2011 after he was released from jail.

¶6 In May 2011, ADES moved to terminate Adrian’s parental rights to Adriana on the grounds of neglect and abuse, mental illness and chronic substance abuse, and Adriana’s nine months of out-of-home placement. After a contested termination hearing, the juvenile court found termination was warranted based on mental illness and chronic substance abuse grounds, as well as time-in-care grounds. The court additionally found that Adriana was adoptable and that termination was in her best interests.

¶7 Adrian asserts insufficient evidence supported the juvenile court’s conclusion that termination was warranted based on substance abuse or mental illness.

He additionally asserts termination is not in Adriana’s best interests “because of a very strong bond between father and child.” But he identifies no legal error in the court’s analysis; instead his argument essentially asks us to reweigh the evidence on appeal, which we will not do. *See Jesus M.*, 203 Ariz. 278, ¶ 12, 53 P.3d at 207.

¶8 In granting the motion to terminate Adrian’s parental rights, the juvenile court prepared a thorough minute entry setting out its factual findings as well as its legal conclusions. The record contains reasonable evidence to support the court’s factual findings with respect to Adrian’s mental illness and substance abuse. *See Denise R.*, 221 Ariz. 92, ¶ 4, 210 P.3d at 1264 (factual findings upheld if supported by reasonable evidence). Those findings, in turn, support its legal conclusions that severing Adrian’s parental rights was warranted under § 8-533(B)(3)² and that termination of those rights is in Adriana’s best interests. We therefore adopt those findings of fact and approve the court’s associated conclusions of law. *See Jesus M.*, 203 Ariz. 278, ¶ 16, 53 P.3d at 207-08, *citing State v. Whipple*, 177 Ariz. 272, 274, 896 P.2d 1358, 1360 (App. 1993). To the extent Adrian argues that Adriana must be placed with a relative, he acknowledges he lacks standing to challenge her placement, *Antonio M. v. Ariz. Dep’t of Econ. Sec.*, 222

²The state withdrew its request to terminate Adrian’s parental rights on time-in-care grounds, but the juvenile court nonetheless found termination on that ground was warranted. Although the state concedes on appeal that insufficient evidence supported the court’s ruling, because we find sufficient evidence supported termination based on Adrian’s mental illness and substance abuse pursuant to § 8-533(B)(3), we need not address whether sufficient evidence supported termination on time-in-care grounds or whether the court erred in considering that ground. *See Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, ¶ 27, 995 P.2d 682, 687 (2000).

Ariz. 369, ¶ 2, 314 P.3d 1010, 1011 (App. 2009), and we do not address this argument further.

¶9 We affirm the juvenile court's order terminating Adrian's parental rights.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge